IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 23RD JULY 2007 / 1ST SRAVANA 1929

MFA.No. 674 of 1995(B)

OPMV.85/1990 of MOTOR ACCIDENT CLAIMS TRIBUNAL, ATTINGAL
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APPELLANT: 1ST RESPONDENT:

A.M.MUSTHAFA, MUSTHAFA BROTHERS,
NAVAS MANZIL THEKKATTIL,
PERUMKUZHY, TRIVANDRUM.

BY ADV. SRI.V.GIRI

RESPONDENTS: APPLICANT & RESPONDENTS 2 AND 3
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1. SALMA BEEVI, MANAKKATTIL VEEDU,
KADINAMKULAM, TRIVANDRUM.

2. THE NATIONAL INSURANCE COMPANY LTD.
TRIVANDRUM.

3. RAMAKRISHNAN CHETTIYAR, KATTIL VEEDU
NEAR KUMILI PALLI, KANIYAPURAM, TRIVANDRUM.

BY ADV. SRI.P.SANTHOSH KUMAR (TR)
SRI.JOHNSON P.JOHN
SRI.P.SATHIKUMAR
SRI.M.SREEKUMAR

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 23/07/2007, ALONG WITH OP NO. 12860 OF 1997 , THE COURT ON DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

M.F.A.No.674 of 1995 &
O.P.No.12860 of 1997

Dated this the 23rd July, 2007.

J U D G M E N T

The owner of a lorry bearing Registration No.KRT 7359, who was the first respondent, in O.P.(M.V.) No.85/90, on the file of the Motor Accidents Claims Tribunal, Attingal, is the appellant. The appeal is filed against an award passed by the Tribunal, by which it had awarded a compensation of Rs.66,000/= to the first respondent.

2. The short facts necessary for the disposal of the appeal and Original Petition are as follows. The first respondent filed a petition claiming compensation against the appellant and two other respondents, alleging that at about 10 a.m. on 7.9.86, her husband who was riding a motor bike was knocked down by the lorry bearing Registration No.KRT 7359, driven by the driver, in a rash or negligent manner. The injured was taken to the Medical College Hospital, and while undergoing treatment, he succumbed to the injuries. Applicant, the widow of the deceased, filed a petition claiming compensation of Rs.2,42,000/=.

3. The appellant filed a written statement contending that the accident occurred not due to the negligence of the driver of the lorry. The quantum of compensation claimed was disputed. It was also contented that the vehicle was covered with a valid policy of insurance issued by the second respondent, Insurer. The second respondent contented that as per the records available with them, there was nothing to show that the vehicle was insured with them. Third respondent also filed a written statement stating that he was driving the lorry very carefully and there was no negligence on his part.

4. The claim petition was originally filed before the Motor Accidents Claims Tribunal, Thiruvananthapuram. Subsequently, it was made over to Motor Accidents Claims Tribunal, Attingal. The appellant did not appear before transferee Tribunal and contest the matter. The Tribunal, after considering the evidence of the petitioner, awarded a compensation of Rs.66,000/=. In view of the contentions raised by the Insurer that the vehicle was not covered with a valid policy of insurance, the Tribunal directed the appellant, owner of the vehicle, to pay the amount. The appellant filed I.A.No.627/1992 before the Motor Accidents Claims Tribunal, Attingal, for review of the award passed. The Tribunal dismissed that review petition.

Challenging that award, this appeal is filed, with a petition to condone the delay in filing the appeal. The delay was condoned, and the appeal was admitted.

5. In the meanwhile, claimant initiated proceedings for recovery of the amount. Accordingly, a warrant of arrest was issued against the petitioner. Against the order issuing arrest and declaration, the appellant filed O.P.No.12860/1997 before this Court for quashing the recovery proceedings. That Original Petition was admitted and recovery proceedings were stayed. Therefore, that Original Petition was also posted along with this appeal. Hence, both these cases are heard together.

6. Though there is a contention that the accident occurred not due to the negligence of the driver, and the quantum of compensation awarded is very high, I do not find any reason to interfere with those findings of fact. The fact that the husband of the first petitioner sustained injuries in a motor vehicle accident, and he died on account of the injuries sustained are proved in this case. The Tribunal had awarded only an amount of Rs.66,000/= as compensation. The compensation awarded is very reasonable. Before the Tribunal, the Insurer took up a contention that since no documents

were available with it to show that the vehicle was covered with a valid policy of insurance, the insurer was not liable. The Tribunal accepted that contention and fastened the liability on the appellant. The award was passed on 27.6.1992. Immediately thereafter, a petition for review was filed and copy of policy produced. The Insurer instead of conceding its liability, raised a objection that the review petition was not maintainable. The Tribunal took a view that no ground for review was made out, and dismissed the review petition.

7. In this appeal also, the appellant filed C.M.P.No.3681/1997, as early as in 6.8.1997, and produced the certified copy of the policy issued by the insurer. Till date, no objection is filed by the Insurer. The copy of the policy produced shows that the vehicle bearing Registration No.KRT 7359, Tata Lorry, Public Carrier, owned by the appellant was covered with a valid policy of insurance issued by the second respondent. The period of policy was from 20.1.1986 till 19.1.1987. The accident occurred on 7.9.1986, that is during the currency of this policy. So, that part of the award, by which the appellant was made liable, is to be set aside, and the Insurer is liable to pay the entire amount with interest.

8. In the result, the appeal and the Original Petition are disposed of in the following manner. M.F.A. is allowed in part. That part of the award by which the Tribunal directed the appellant to pay the amount of compensation to the first respondent, is hereby set aside. Award passed by the Tribunal is modified allowing the first respondent, petitioner in the original petition, to recover the entire compensation awarded from the 2nd respondent Insurer. The Insurer is directed to deposit the entire amount due under the award within two months from today.

In view of my decision rendered in M.F.A.No.674/1995, Ext.P3 order passed by the Tribunal to arrest and produce the petitioner in O.P.No.12860/1997, who is the appellant in M.F.A.No.674/1995, is hereby quashed.

C.M.P.No.22960/1997 in O.P.No.12860/1997 is dismissed.

K.PADMANABHAN NAIR,
JUDGE

nj.

K.PADMANABHAN NAIR, J.

M.F.A.No.674/1995 &
O.P.No.12860/1997

J U D G M E N T

Dated: 23rd July, 2007.